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09/297,237	05/17/1999	HARTMUT EICHINGER		9458

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EXAMINER

THISSELL, JENNIFER I

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 19

Application Number: 09/297,237
Filing Date: May 17, 1999
Appellant(s): EICHINGER, HARTMUT

Edwin D. Schindler
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 31, 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief contains a statement indicating that there are no related appeals or interferences pending.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's statement that the patentability of claims 21-31 will be allowed to stand or fall on the basis of whether claim 20 is patentable is acknowledged.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,365,799	O'Brian et al.	12-1982
4,447,055	Ahrens	5-1984
4,262,900	Vinson	4-1981

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 20, 25, 26, and 28-31 stand rejected under 35 U.S.C. 102(b) as being anticipated by O'Brian et al. (U.S. Patent 4,365,799).

O'Brian teaches a play structure comprising vertical plate-like supporting posts 20,22 having vertical stops or locking elements

34,30,98 with recesses provided at these plug connections, there is a roof 96 affixed to said support posts, the roof being a self-supporting slab resting in a horizontal direction, and there is a side-rail 136 on the top side of the slab. There is a fastening device 108 on the base or edge of the slab, and Figure 6 reveals a guide rail as part of the fastening hinge 108, placed on the underside of the slab at 106.

Regarding claim 26, the cited reference embodies support posts 98 which have a length exceeding a distance as measured from said roof 96 to a floor level, in addition to a recess 104 into which said self-supporting slab is capable of being inserted.

Note that the Examiner is interpreting the limitation "playhouse" to be a structure in which children play. Figure 5 shows a space under the roof/platform in which children can seek shelter, play, etc. While the play structure is not a housing structure in the traditional sense, the cover provided by member 96 would serve as a roof to a child playing under the structure, or alternatively, as a platform to a child walking on top of the member 96. Therefore, the Examiner contends that to the extent children use a playhouse, the horizontal member 96 is the structural equivalent to a roof and/or platform.

Claims 22, 23, and 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brian et al. (U.S. Patent 4,365,799).

O'Brian teaches a play structure as stated above, but does not teach of the self-supporting slab to be as a hexagon or a half-hexagon. In light of the specification, no level of criticality is established for the hexagonal shape. The Examiner contends that the structure would perform identically with a slab shape other than instantly claimed. As such, the desired slab shape would be a design option to one having ordinary skill in the art.

Regarding claim 27, O'Brian discloses the claim invention except for the vertical plate-like bodies material composition. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select straw with a binding agent as the material for the vertical plate-like bodies, since it is within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Straw with a binding agent has routinely been selected as an adequate building material for structural members.

Claim 21 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brian et al. (U.S. Patent 4,365,799) in view of Ahrens (U.S. Patent 4,447,055).

O'Brian teaches a play structure as stated above, but does not teach of a self-supporting slab comprising a cover plate which rests upon a level framework. In Figures 1 and 2, Ahrens teaches of a play structure with a cover plate 12, which rests upon a frame 32. It would have been obvious to one

having ordinary skill in the art at the time the invention was made to employ the use of a framework, such as that of Ahrens, with O'Brian's invention so as to provide a more rigid and secure slab structure. Figure 6 of O'Brian reveals some usage of such a cover plate/frame assembly, thus making it obvious to combine the teaching's of Ahrens.

Claim 24 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brian et al. (U.S. Patent 4,365,799) in view of Vinson (U.S. Patent 4,262,900).

O'Brian teaches a play structure as stated above, but does not teach of said supporting posts having a horizontal cross-section which is bent or curved. While the Examiner considers the particular cross-section to be a design choice, Vinson is cited to reinforce the Examiner's position. In Figure 1, Vinson reveals supporting posts 38, which are bent or curved in cross-section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the play structure of O'Brian with the bent/curved supporting posts of Vinson so as to provide an adequate and alternative design choice. This may also render additional support.

(11) Response to Argument

In response to Appellant's argument that "no playhouse, or housing structure of any kind, and no "roof" structure is either disclosed in or


suggested by O'Brian", and that "nothing suggests that the structure of O'Brian et al. can be used as a playhouse", the Examiner would like to respectfully point out that this is incorrect. O'Brian does teach that small slide-type structures are known to be constructed so that "the space underneath the platform can be utilized as a "hidey-hole" by children for play purposes" (column 1, lines 40-41). But most importantly, O'Brian specifically teaches that the openings 132 in panels 122 that are located at each side of the play structure (Figure 5) can be large enough "so as to permit a child to crawl within the space (not numbered) under the platform 96" (column 6, lines 36-42). Although the word "roof" is not specifically used, it is clear that the space underneath the platform 96 is described as a place where children can play with covering over their heads.

Appellant states "had the structure disclosed in O'Brian et al. been a combination slide and playhouse, where it is reasonable to find that the platform also functioned as a roof for the playhouse beneath, then Appellant could agree with the Examiner". The Examiner points out that because the area underneath the platform 96 is disclosed as a play area and that the structure is also a slide, it is reasonable to state that O'Brian's structure is in fact a combination slide and playhouse, and that because the play area underneath the platform 96 provides cover for children, that the platform does in fact function as a "roof".


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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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August 26, 2002

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